UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/821,025	03/19/1997	HENDRIK LOUIS BIJL	GRT/4662-399	3574

23117 7590 12/18/2008

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER	
MARX, IRENE	

ART UNIT	PAPER NUMBER
1651	

MAIL DATE	DELIVERY MODE
12/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

The after final amendment filed 11/17/08 is acknowledged.

Response to Arguments

Applicant's arguments have been fully considered but they are not deemed to be persuasive.

Applicant's contention that the office has not established that all limitations are known in the prior art is noted. Yet, applicant has not identified any particular limitations that distinguish the claimed granule composition over similar granule compositions known in the art. For example, the dry matter content, the porosity and the size are all readily adjustable by one of ordinary skill in the art of drying microorganisms and of extrusion and vary widely throughout the claim designated invention.

Applicant argues that the cited references do not provide a reasonable expectation of success of producing granules by extrusion and drying to extract fatty acids from Mortierella. However, the invention as claimed is directed broadly to "a dried composition comprising granules comprising dead extruded Mortierella which granules in the composition have a porosity generated by drying and which have a broad range of diameters."

In addition, Akimoto *et al.* teach a dry *Mortierella* composition (See, e.g., col. 8, lines 7-12) containing fatty acids capable of being extracted. Moreover, Barclay teaches a related microbial composition containing fatty acids wherein the composition is extruded. See, e.g., bridging paragraph between col. 11 and 12. The reference recognizes the advantages of an extruded product regarding reduction of drying time and costs as well as an increase in the bioavailability of the fatty acids upon extrusion. Furthermore, Huang *et al.* teach extruded granules of fungi such as *Aspergillus* which are subsequently dried. See, e.g., bridging paragraph between col. 2 and 3, and col. 3, lines 11-17. The extruded material would reasonably be expected to be porous as claimed, to have the degree of dryness required and to have the dimensions as claim designated.

That Langejan and Groenedaal disclose live yeast and address different problems is noted. However, these references are provided in an obviousness rejection to demonstrate that it is known in the art to provide compositions that comprise fungal product that are granular, porous and have the appropriate dimensions. Applicant argues that the intended use is different.

However, as noted previously, the invention as claimed is not directed with any particularity to a product having distinguishing structural properties as touted and argued.

The arguments regarding Example 25 are noted. To begin with, there are two Examples 25. Even though extrusion is mentioned at Example 25 (II), an extrusion procedure is not clearly found in Example 1. Moreover, it is unclear that the touted results of Example 25 pertain with any specificity to the invention as claimed and applicant has not shown otherwise.

The scope of the showing must be commensurate with the scope of claims to consider evidence probative of unexpected results, for example. In re Dill, 202 USPQ 805 (CCPA, 1979), In re Lindner 173 USPQ 356 (CCPA 1972), In re Hyson, 172 USPQ 399 (CCPA 1972), In re Boesch, 205 USPQ 215, (CCPA 1980), In re Grasselli, 218 USPQ 769 (Fed. Cir. 1983), In re Clemens, 206 USPQ 289 (CCPA 1980). It should be clear that the probative value of the data is not commensurate in scope with the degree of protection sought by the claim.

Therefore the rejection is deemed proper and it is adhered to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 .

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Irene Marx/
Primary Examiner
Art Unit 1651